

AMENDED IN SENATE MAY 9, 2005
AMENDED IN SENATE APRIL 21, 2005

SENATE BILL

No. 1112

Introduced by Committee on Business, Professions and Economic Development (Senators Figueroa (Chair), Aanestad, Campbell, Florez, Morrow, Murray, and Simitian)

March 30, 2005

An act to amend Sections 5515, 7011.4, 7028.13, 7071.6, 7071.11, 7071.12, 7073, 7085, ~~7085.5~~, 7110.5, and 7145.5 of, and to repeal and add Section 7071.15 of, the Business and Professions Code, and to amend Section 19830 of the Health and Safety Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1112, as amended, Committee on Business, Professions and Economic Development. Contractors *and architects*.

(1) Existing law provides for the licensing and regulation of architects by the California Architects Board in the Department of Consumer Affairs. Existing law provides that appointments to the board expire on June 1 of the 4th year following the year in which the previous term expired.

This bill would instead provide that board appointments expire on June 30 of the 4th year following the year in which the previous term expired.

(2) Existing law, the Contractors' State License Law, provides for the licensing and regulation of contractors by the Contractors' State License Board in the Department of Consumer Affairs. Existing law requires cities and counties that require issuance of a permit as a condition precedent to the construction, alteration, improvement, demolition, or repair of a building or structure to give specified

notices. Existing law creates an enforcement unit within the board, and specifies that employees of the unit are not peace officers and are not entitled to safety member retirement benefits.

This bill would revise the above notice requirement to conform with certain provisions of existing law. The bill would delete the provision specifying that employees of the enforcement unit are not entitled to safety member retirement benefits.

Existing law establishes an arbitration process administered by the board to resolve disputes between contractors and consumers. Existing law authorizes the registrar of contractors, after investigating complaints and finding possible violations, to refer the alleged violation and complaint to arbitration if damages are more than \$7,500, and if certain other conditions are met. ~~Existing law requires an arbitrator to establish the extent of, and a schedule for, discovery in a contracting dispute arbitration.~~

This bill would instead require that, for referral to arbitration, the damages or potential damages be greater than the amount of the licensing bond required. ~~The bill would delete the provisions relative to discovery, and would provide that no formal discovery be conducted in arbitration.~~

Existing law requires the registrar, upon receipt of a certified copy of the Labor Commissioner's finding of a willful or deliberate violation of certain provisions, to initiate formal disciplinary action against a license within 30 days of notification.

This bill would delete the requirement that the disciplinary action be formal.

Existing law requires an action not to recover wages or fringe benefits against a deposit to be brought within a certain time period after expiration of a license, or after the license was inactivated, canceled, or revoked. Existing law provides that a deposit in lieu of a bond shall not be released until a complaint is adjudicated.

This bill would also require a claim to recover wages or fringe benefits to be brought within 6 months of discovery of the wage or fringe benefit delinquencies, but not later than 2 years from the date the wage or fringe benefit contributions were due. The bill would provide that legal fees can't be charged by the board against a deposit posted. The bill would delete the provisions that a deposit shall not be released until a complaint is adjudicated and would instead provide that, if the board receives written notification of a civil action against a deposit, the bond will not be released except as ordered by the court.

Existing law subjects a licensee to suspension or revocation of a license where the licensee fails to maintain a sufficient bond. Existing law authorizes the registrar to refuse to issue, reinstate, reactivate, or renew a license, or to suspend a license, for failure of licensee to resolve all outstanding final liabilities.

This bill would instead suspend a license, without notice from the board, where a licensee fails to maintain a sufficient bond. The bill would also authorize the registrar, in denying licensure, to issue a probationary license, and would enact provisions relating to revocation and renewal of a probationary license. The bill would prohibit a person and any member or personnel of a license subject to suspension from serving as an officer, director, associate, partner, owner, qualifying individual, or personnel of record for another license, and would suspend the license of another renewable licensed entity with any of the same personnel of record that has been assessed an outstanding liability, until the debt is satisfied or the personnel dissociates themselves from the entity.

This bill would make other nonsubstantive changes to the provisions relating to contractors.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 5515 of the Business and Professions
- 2 Code is amended to read:
- 3 5515. Every person appointed shall serve for four years and
- 4 until the appointment and qualification of his or her successor or
- 5 until one year shall have elapsed since the expiration of the term
- 6 for which he or she was appointed, whichever first occurs.
- 7 No person shall serve as a member of the board for more than
- 8 two consecutive terms.
- 9 Vacancies occurring prior to the expiration of the term shall be
- 10 filled by appointment for the unexpired term.
- 11 Each appointment shall expire on June 30 of the fourth year
- 12 following the year in which the previous term expired.
- 13 The Governor shall appoint three of the public members and
- 14 the five licensed members qualified as provided in Section 5514.
- 15 The Senate Rules Committee and the Speaker of the Assembly
- 16 shall each appoint a public member.

1 SEC. 2. Section 7011.4 of the Business and Professions Code
2 is amended to read:

3 7011.4. (a) Notwithstanding Section 7011, there is in the
4 Contractors' State License Board, a separate enforcement unit
5 which shall rigorously enforce this chapter prohibiting all forms
6 of unlicensed activity.

7 (b) Persons employed as enforcement representatives in this
8 unit and designated by the Director of Consumer Affairs are not
9 peace officers. They do not have the power of arrest. However,
10 they may issue a written notice to appear in court pursuant to
11 Chapter 5c (commencing with Section 853.5) of Title 3 of Part 2
12 of the Penal Code.

13 SEC. 3. Section 7028.13 of the Business and Professions
14 Code is amended to read:

15 7028.13. (a) After the exhaustion of the review procedures
16 provided for in Sections 7028.10 to 7028.12, inclusive, the
17 registrar may apply to the appropriate superior court for a
18 judgment in the amount of the civil penalty and an order
19 compelling the cited person to comply with the order of
20 abatement. The application, which shall include a certified copy
21 of the final order of the registrar, shall constitute a sufficient
22 showing to warrant the issuance of the judgment and order. If the
23 cited person did not appeal the citation, a certified copy of the
24 citation and proof of service, and a certification that the person
25 cited is not or was not a licensed contractor or applicant for a
26 license at the time of issuance of the citation, shall constitute a
27 sufficient showing to warrant the issuance of the judgment and
28 order.

29 (b) Notwithstanding any other provision of law, the registrar
30 may delegate the collection of the civil penalty for any citation
31 issued to any person or entity legally authorized to engage in
32 collections. Costs of collection shall be borne by the person cited.
33 The registrar shall not delegate the authority to enforce the order
34 of abatement.

35 (c) Notwithstanding any other provision of law, the registrar
36 shall have the authority to assign the rights to the civil penalty, or
37 a portion thereof, for adequate consideration. The assignee and
38 the registrar shall have all the rights afforded under the ordinary
39 laws of assignment of rights and delegation of duties. The
40 registrar shall not assign the order of abatement. The assignee

1 may apply to the appropriate superior court for a judgment based
2 upon the assigned rights upon the same evidentiary showing as
3 set forth in subdivision (a).

4 (d) Notwithstanding any other provision of law, including
5 subdivisions (a) and (b) of Section 340 of the Code of Civil
6 Procedure, the registrar or his or her designee or assignee shall
7 have four years from the date of the final order to collect civil
8 penalties except that the registrar or his or her designee or
9 assignee shall have 10 years from the date of the judgment to
10 enforce civil penalties on citations that have been converted to
11 judgments through the process described in subdivisions (a) and
12 (c).

13 SEC. 4. Section 7071.6 of the Business and Professions Code
14 is amended to read:

15 7071.6. (a) The board shall require as a condition precedent
16 to the issuance, reinstatement, reactivation, renewal, or continued
17 maintenance of a license, that the applicant or licensee file or
18 have on file a contractor's bond in the sum of ten thousand
19 dollars (\$10,000), regardless of the classification. However, on
20 and after January 1, 2007, the sum of the bond that an applicant
21 or licensee is required to have on file shall be twelve thousand
22 five hundred dollars (\$12,500).

23 (b) Excluding the claims brought by the beneficiaries specified
24 in subdivision (a) of Section 7071.5, the aggregate liability of a
25 surety on claims brought against a bond required by this section
26 shall not exceed the sum of seven thousand five hundred dollars
27 (\$7,500). The bond proceeds in excess of seven thousand five
28 hundred dollars (\$7,500) shall be reserved exclusively for the
29 claims of the beneficiaries specified in subdivision (a) of Section
30 7071.5. However, nothing in this section shall be construed so as
31 to prevent any beneficiary specified in subdivision (a) of Section
32 7071.5 from claiming or recovering the full measure of the bond
33 required by this section.

34 (c) No bond shall be required of a holder of a license that has
35 been inactivated on the official records of the board during the
36 period the license is inactive.

37 (d) Notwithstanding any other provision of law, as a condition
38 precedent to licensure, the board may require an applicant to post
39 a contractor's bond in twice the amount required pursuant to

1 subdivision (a) until the time that the license is renewed, under
2 the following conditions:

3 (1) The applicant has either been convicted of a violation of
4 Section 7028 or has been cited pursuant to Section 7028.7.

5 (2) If the applicant has been cited pursuant to Section 7028.7,
6 the citation has been reduced to a final order of the registrar.

7 (3) The violation of Section 7028, or the basis for the citation
8 issued pursuant to Section 7028.7, constituted a substantial injury
9 to the public.

10 SEC. 5. Section 7071.11 of the Business and Professions
11 Code is amended to read:

12 7071.11. (a) The aggregate liability of a surety on a claim for
13 wages and fringe benefits brought against any bond required by
14 this article, other than a bond required by Section 7071.8, shall
15 not exceed the sum of four thousand dollars (\$4,000). If any bond
16 required by this article is insufficient to pay all claims in full, the
17 sum of the bond shall be distributed to all claimants in proportion
18 to the amount of their respective claims.

19 (b) No license may be renewed, reissued, or reinstated while
20 any judgment or admitted claim in excess of the amount of the
21 bond remains unsatisfied. The following limitations periods
22 apply to bonds required by this article:

23 (1) Any action, other than an action to recover wages or fringe
24 benefits, against a contractor's bond or a bond of a qualifying
25 individual filed by an active licensee shall be brought within two
26 years after the expiration of the license period during which the
27 act or omission occurred, or within two years of the date the
28 license of the active licensee was inactivated, canceled, or
29 revoked by the board, whichever first occurs.

30 (2) Any action, other than an action to recover wages or fringe
31 benefits, against a disciplinary bond filed by an active licensee
32 pursuant to Section 7071.8 shall be brought within two years
33 after the expiration of the license period during which the act or
34 omission occurred, or within two years of the date the license of
35 the active licensee was inactivated, canceled, or revoked by the
36 board, or within two years after the last date for which a
37 disciplinary bond filed pursuant to Section 7071.8 was required,
38 whichever date is first.

39 (3) A claim to recover wages or fringe benefits shall be
40 brought within six months from the date that the wage or fringe

1 benefit delinquencies were discovered, but in no event shall a
2 civil action thereon be brought later than two years from the date
3 the wage or fringe benefit contributions were due.

4 (c) Whenever the surety makes payment on any claim against
5 a bond required by this article, whether or not payment is made
6 through a court action or otherwise, the surety shall, within 30
7 days of the payment, provide notice to the registrar. The notice
8 required by this subdivision shall provide the following
9 information by declaration on a form prescribed by the registrar:

- 10 (1) The name and license number of the contractor.
11 (2) The surety bond number.
12 (3) The amount of payment.
13 (4) The statutory basis upon which the claim is made.
14 (5) The names of the person or persons to whom payments
15 have been made.

16 (6) Whether or not the payments were the result of a good
17 faith action by the surety.

18 The notice shall also clearly indicate whether or not the
19 licensee filed a protest in accordance with this section.

20 (d) Prior to the settlement of a claim through a good faith
21 payment by the surety, a licensee shall have not less than 15 days
22 in which to provide a written protest. This protest shall instruct
23 the surety not to make payment from the bond on the licensee's
24 account upon the specific grounds that the claim is opposed by
25 the licensee, and provide the surety a specific and reasonable
26 basis for the licensee's opposition to payment.

27 (1) Whenever a licensee files a protest in accordance with this
28 subdivision, the board shall investigate the matter and file
29 disciplinary action as set forth under this chapter if there is
30 evidence that the surety has sustained a loss as the result of a
31 good faith payment made for the purpose of mitigating any
32 damages incurred by any person or entity covered under Section
33 7071.5.

34 (2) Any licensee that fails to file a protest as specified in this
35 subdivision shall have 90 days from the date of notification by
36 the board to submit proof of payment of the actual amount owed
37 to the surety and, if applicable, proof of payment of any
38 judgment or admitted claim in excess of the amount of the bond
39 or, by operation of law, the license shall be suspended at the end
40 of the 90 days. A license suspension pursuant to this subdivision

1 shall be disclosed indefinitely as a failure to settle outstanding
2 final liabilities in violation of this chapter. The disclosure
3 specified by this subdivision shall also be applicable to all
4 licenses covered by the provisions of subdivision (d).

5 (e) No license may be renewed, reissued, or reinstated while
6 any surety remains unreimbursed for any loss or expense
7 sustained on any bond issued for the licensee or for any entity of
8 which any officer, director, member, partner, or qualifying
9 person was an officer, director, member, partner, or qualifying
10 person of the licensee while the licensee was subject to
11 suspension or disciplinary action under this section.

12 (f) The licensee may provide the board with a notarized copy
13 of an accord, reached with the surety to satisfy the debt in lieu of
14 full payment. By operation of law, failure to abide by the accord
15 shall result in the automatic suspension of any license to which
16 this section applies. A license that is suspended for failure to
17 abide by the accord may only be renewed or reinstated when
18 proof of satisfaction of all debts is made.

19 (g) Legal fees may not be charged against the bond by the
20 board.

21 SEC. 6. Section 7071.12 of the Business and Professions
22 Code is amended to read:

23 7071.12. (a) Instead of the bond provided by this article a
24 deposit may be given pursuant to Article 7 (commencing with
25 Section 995.710) of Chapter 2 of Title 14 of Part 2 of the Code of
26 Civil Procedure.

27 (b) If the board is notified, in writing, of a civil action against
28 the deposit authorized under this section, the deposit or any
29 portion thereof shall not be released for any purpose, except as
30 determined by the court.

31 (c) If any deposit authorized under this section is insufficient
32 to pay, in full, all claims that have been adjudicated under any
33 action filed in accordance with this section, the sum of the
34 deposit shall be distributed to all claimants in proportion to the
35 amount of their respective claims.

36 (d) The following limitations periods apply to deposits in lieu
37 of the bond required by this article:

38 (1) Any action, other than an action to recover wages or fringe
39 benefits, against a deposit given in lieu of a contractor's bond or
40 bond of a qualifying individual filed by an active licensee shall

1 be brought within three years after the expiration of the license
2 period during which the act or omission occurred, or within three
3 years of the date the license of the active licensee was
4 inactivated, canceled, or revoked by the board, whichever occurs
5 first.

6 (2) Any action, other than an action to recover wages or fringe
7 benefits, against a deposit given in lieu of a disciplinary bond
8 filed by an active licensee pursuant to Section 7071.8 shall be
9 brought within three years after the expiration of the license
10 period during which the act or omission occurred, or within three
11 years of the date the license of the active licensee was
12 inactivated, canceled, or revoked by the board, or within three
13 years after the last date for which a deposit given in lieu of a
14 disciplinary bond filed pursuant to Section 7071.8 was required,
15 whichever date is first.

16 (3) A claim to recover wages or fringe benefits shall be
17 brought within six months from the date that the wage or fringe
18 benefit delinquencies were discovered, but in no event shall a
19 civil action thereon be brought later than two years from the date
20 the wage or fringe benefit contributions were due.

21 (e) In any case in which a claim is filed against a deposit given
22 in lieu of a bond by any employee or by an employee
23 organization on behalf of an employee, concerning wages or
24 fringe benefits based upon the employee's employment, claims
25 for the nonpayment shall be filed with the Labor Commissioner.
26 The Labor Commissioner shall, pursuant to the authority vested
27 by Section 96.5 of the Labor Code, conduct hearings to
28 determine whether or not the wages or fringe benefits should be
29 paid to the complainant. Upon a finding by the commissioner that
30 the wages or fringe benefits should be paid to the complainant,
31 the commissioner shall notify the register of the findings. The
32 registrar shall not make payment from the deposit on the basis of
33 findings by the commissioner for a period of 10 days following
34 determination of the findings. If, within the period, the
35 complainant or the contractor files written notice with the
36 registrar and the commissioner of an intention to seek judicial
37 review of the findings pursuant to Section 11523 of the
38 Government Code, the registrar shall not make payment if an
39 action is actually filed, except as determined by the court. If,
40 thereafter, no action is filed within 60 days following

1 determination of findings by the commissioner, the registrar shall
2 make payment from the deposit to the complainant.

3 (f) Legal fees may not be charged by the board against any
4 deposit posted pursuant to this section.

5 SEC. 7. Section 7071.15 of the Business and Professions
6 Code is repealed.

7 SEC. 8. Section 7071.15 is added to the Business and
8 Professions Code, to read:

9 7071.15. By operation of law, failure to maintain any bond
10 that is required under this article as a condition of licensure or
11 continued licensure shall, without notice by the board, result in
12 the suspension of the license for which the bond is required.

13 SEC. 9. Section 7073 of the Business and Professions Code is
14 amended to read:

15 7073. (a) The registrar may deny any application for a
16 license or supplemental classification where the applicant has
17 failed to comply with any rule or regulation adopted pursuant to
18 this chapter or where there are grounds for denial under Section
19 480. Procedures for denial of an application shall be conducted in
20 accordance with Section 485.

21 (b) When the board has denied an application for a license on
22 grounds that the applicant has committed a crime substantially
23 related to qualifications, functions, or duties of a contractor, it
24 shall, in its decision or in its notice under subdivision (b) of
25 Section 485, inform the applicant of the earliest date on which
26 the applicant may reapply for a license. The board shall develop
27 criteria, similar to the criteria developed to evaluate
28 rehabilitation, to establish the earliest date on which the applicant
29 may reapply. The date set by the registrar shall not be more than
30 five years from the effective date of the decision or service of
31 notice under subdivision (b) of Section 485.

32 (c) The board shall inform an applicant that all competent
33 evidence of rehabilitation shall be considered upon reapplication.

34 (d) Along with the decision or notice under subdivision (b) of
35 Section 485, the board shall serve a copy of the criteria for
36 rehabilitation formulated under Section 482.

37 (e) In lieu of denying licensure as authorized under this
38 section, the registrar may issue an applicant a probationary
39 license with terms and conditions. During the probationary
40 period, if information is brought to the attention of the registrar

1 regarding any act or omission of the licensee constituting
2 grounds for discipline or denial of licensure for which the
3 registrar determines that revocation of the probationary license
4 would be proper, the registrar shall notify the applicant to show
5 cause within 30 days why the probationary license should not be
6 revoked. The proceedings shall be conducted in accordance with
7 the provisions of Chapter 5 (commencing with Section 11500) of
8 Part 1 of Division 3 of Title 2 of the Government Code, and the
9 registrar shall have all the powers granted therein. A
10 probationary license shall not be renewed during any period in
11 which any proceeding brought pursuant to this section is
12 pending.

13 SEC. 10. Section 7085 of the Business and Professions Code
14 is amended to read:

15 7085. (a) After investigating any verified complaint alleging
16 a violation of Section 7107, 7109, 7110, 7113, 7119, or 7120,
17 and any complaint arising from a contract involving works of
18 improvement and finding a possible violation, the registrar may,
19 with the concurrence of both the licensee and the complainant,
20 refer the alleged violation, and any dispute between the licensee
21 and the complainant arising thereunder, to arbitration pursuant to
22 this article, provided the registrar finds that:

23 (1) There is evidence that the complainant has suffered or is
24 likely to suffer material damages as a result of a violation of
25 Section 7107, 7109, 7110, 7113, 7119, or 7120, and any
26 complaint arising from a contract involving works of
27 improvement.

28 (2) There are reasonable grounds for the registrar to believe
29 that the public interest would be better served by arbitration than
30 by disciplinary action.

31 (3) The licensee does not have a history of repeated or similar
32 violations.

33 (4) The licensee was in good standing at the time of the
34 alleged violation.

35 (5) The licensee does not have any outstanding disciplinary
36 actions filed against him or her.

37 (6) The parties have not previously agreed to private
38 arbitration of the dispute pursuant to contract or otherwise.

39 (7) The parties have been advised of the provisions of Section
40 2855 of the Civil Code.

1 For the purposes of paragraph (1), “material damages” means
2 damages greater than the amount of the bond required under
3 subdivision (a) of Section 7071.6, but less than fifty thousand
4 dollars (\$50,000).

5 (b) In all cases in which a possible violation of the sections set
6 forth in paragraph (1) of subdivision (a) exists and the contract
7 price, or the demand for damages is equal to or less than the
8 amount of the bond required under Section 7071.6, but,
9 regardless of the contract price, the complaint shall be referred to
10 arbitration, utilizing the criteria set forth in paragraphs (2) to (6),
11 inclusive, of subdivision (a).

12 ~~SEC. 11. Section 7085.5 of the Business and Professions~~
13 ~~Code is amended to read:~~

14 ~~7085.5. Arbitrations of disputes arising out of cases filed with~~
15 ~~or by the board shall be conducted in accordance with the~~
16 ~~following rules:~~

17 ~~(a) All “agreements to arbitrate” shall include the names,~~
18 ~~addresses, and telephone numbers of the parties to the dispute,~~
19 ~~the issue in dispute, and the amount in dollars or any other~~
20 ~~remedy sought. The appropriate fee shall be paid by the board~~
21 ~~from the Contractors’ License Fund.~~

22 ~~(b) (1) The board or appointed arbitration association shall~~
23 ~~appoint an arbitrator in the following manner: immediately after~~
24 ~~the filing of the agreement to arbitrate, the board or appointed~~
25 ~~arbitration association shall submit simultaneously to each party~~
26 ~~to the dispute, an identical list of names of persons chosen from~~
27 ~~the panel. Each party to the dispute shall have seven days from~~
28 ~~the mailing date in which to cross off any names to which it~~
29 ~~objects, number the remaining names to indicate the order of~~
30 ~~preference, and return the list to the board or appointed~~
31 ~~arbitration association. If a party does not return the list within~~
32 ~~the time specified, all persons named in the list are acceptable.~~
33 ~~From among the persons who have been approved on both lists,~~
34 ~~and in accordance with the designated order of mutual~~
35 ~~preference, the board or appointed arbitration association shall~~
36 ~~appoint an arbitrator to serve. If the parties fail to agree on any of~~
37 ~~the parties named, if acceptable arbitrators are unable to act, or if,~~
38 ~~for any other reason, the appointment cannot be made from the~~
39 ~~submitted lists, the board or appointed arbitration association~~
40 ~~shall have the power to make the appointment from among other~~

1 members of the panel without the submission of any additional
2 lists. Each dispute shall be heard and determined by one
3 arbitrator unless the board or appointed arbitration association, in
4 its discretion, directs that a greater number of arbitrators be
5 appointed.

6 (2) In all cases in which a complaint has been referred to
7 arbitration pursuant to subdivision (b) of Section 7085, the board
8 or the appointed arbitration association shall have the power to
9 appoint an arbitrator to hear the matter.

10 (3) The board shall adopt regulations setting minimum
11 qualification standards for listed arbitrators based upon relevant
12 training, experience, and performance.

13 (e) No person shall serve as an arbitrator in any arbitration in
14 which that person has any financial or personal interest in the
15 result of the arbitration. Prior to accepting an appointment, the
16 prospective arbitrator shall disclose any circumstances likely to
17 prevent a prompt hearing or to create a presumption of bias.
18 Upon receipt of that information, the board or appointed
19 arbitration association shall immediately replace the arbitrator or
20 communicate the information to the parties for their comments.
21 Thereafter, the board or appointed arbitration association shall
22 determine whether the arbitrator should be disqualified and shall
23 inform the parties of its decision, which shall be conclusive.

24 (d) The board or appointed arbitration association may appoint
25 another arbitrator if a vacancy occurs, or if an appointed
26 arbitrator is unable to serve in a timely manner.

27 (e) (1) The board or appointed arbitration association shall
28 provide the parties with a list of the times and dates, and
29 locations of the hearing to be held. The parties shall notify the
30 arbitrator, within seven calendar days of the mailing of the list, of
31 the times and dates convenient to each party. If the parties fail to
32 respond to the arbitrator within the seven-day period, the
33 arbitrator shall fix the time, place, and location of the hearing. An
34 arbitrator may, at the arbitrator's sole discretion, make an
35 inspection of the construction site which is the subject of the
36 arbitration. The arbitrator shall notify the parties of the time and
37 date set for the inspection. Any party who so desires may be
38 present at the inspection.

39 (2) The board or appointed arbitration association shall fix the
40 time, place, and location of the hearing for all cases referred to

1 ~~arbitration pursuant to subdivision (b) of Section 7085. An~~
2 ~~arbitrator may, at the arbitrator's sole discretion, make an~~
3 ~~inspection of the construction site which is the subject of the~~
4 ~~arbitration. The arbitrator shall notify the parties of the time and~~
5 ~~date set for the inspection. Any party who desires may be present~~
6 ~~at the inspection.~~

7 ~~(f) Any person having a direct interest in the arbitration is~~
8 ~~entitled to attend the hearing. The arbitrator shall otherwise have~~
9 ~~the power to require the exclusion of any witness, other than a~~
10 ~~party or other essential person, during the testimony of any other~~
11 ~~witness. It shall be discretionary with the arbitrator to determine~~
12 ~~the propriety of the attendance of any other person.~~

13 ~~(g) Hearings shall be adjourned by the arbitrator only for good~~
14 ~~cause.~~

15 ~~(h) A record is not required to be taken of the proceedings.~~
16 ~~However, any party to the proceeding may have a record made at~~
17 ~~its own expense. The parties may make appropriate notes of the~~
18 ~~proceedings.~~

19 ~~(i) The hearing shall be conducted by the arbitrator in any~~
20 ~~manner which will permit full and expeditious presentation of the~~
21 ~~case by both parties. The complaining party shall present its~~
22 ~~claims, proofs, and witnesses, who shall submit to questions or~~
23 ~~other examination. The defending party shall then present its~~
24 ~~defenses, proofs, and witnesses, who shall submit to questions or~~
25 ~~other examination. The arbitrator has discretion to vary this~~
26 ~~procedure but shall afford full and equal opportunity to the~~
27 ~~parties for the presentation of any material or relevant proofs.~~

28 ~~(j) The arbitration may proceed in the absence of any party~~
29 ~~who, after due notice, fails to be present. The arbitrator shall~~
30 ~~require the attending party to submit supporting evidence in order~~
31 ~~to make an award. An award for the attending party shall not be~~
32 ~~based solely on the fact that the other party has failed to appear at~~
33 ~~the arbitration hearing.~~

34 ~~(k) The arbitrator shall be the sole judge of the relevancy and~~
35 ~~materiality of the evidence offered and conformity to legal rules~~
36 ~~of evidence shall not be required. Consistent with the expedited~~
37 ~~nature of arbitration, no formal discovery shall be conducted,~~
38 ~~including depositions, interrogatories, requests for admission, or~~
39 ~~other forms of formal civil discovery.~~

~~(l) The arbitrator may receive and consider documentary evidence. Documents to be considered by the arbitrator may be submitted prior to the hearing. However, a copy shall be simultaneously transmitted to all other parties and to the board or appointed arbitration association for transmittal to the arbitrator or board appointed arbitrator.~~

~~(m) The arbitrator shall specifically inquire of the parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, the arbitrator shall declare the hearing closed and minutes thereof shall be recorded. If briefs are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for the receipt of briefs. If documents are to be filed as requested by the arbitrator and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the date of closing the hearings. The time limit within which the arbitrator is required to make the award shall commence to run, in the absence of other agreements by the parties, upon the closing of the hearings.~~

~~(n) The hearing may be reopened on the arbitrator's own motion.~~

~~(o) Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with, and who fails to state his or her objections to the arbitrator in writing, within 10 calendar days of close of hearing, shall be deemed to have waived his or her right to object.~~

~~(p) (1) Except as provided in paragraph (2), any papers or process necessary or proper for the initiation or continuation of an arbitration under these rules and for any court action in connection therewith, or for the entry of judgment on an award made thereunder, may be served upon any party (A) by regular mail addressed to that party or his or her attorney at the party's last known address, or (B) by personal service.~~

~~(2) Notwithstanding paragraph (1), in all cases referred to arbitration pursuant to subdivision (b) of Section 7085 in which the contractor fails or refuses to return an executed copy of the notice to arbitrate within the time specified, any papers or process specified in paragraph (1) to be sent to the contractor, including the notice of hearing, shall be mailed by certified mail to the contractor's address of record.~~

~~(q) The award shall be made promptly by the arbitrator, and unless otherwise agreed by the parties, no later than 30 calendar days from the date of closing the hearing, closing a reopened hearing, or if oral hearing has been waived, from the date of transmitting the final statements and proofs to the arbitrator.~~

~~The arbitrator may for good cause extend any period of time established by these rules, except the time for making the award. The arbitrator shall notify the parties of any extension and the reason therefor.~~

~~(r) (1) The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the board's referral and the requirements of the board. The arbitrator, in his or her sole discretion, may award costs or expenses.~~

~~(2) The amendments made in paragraph (1) during the 2003-04 Regular Session shall not be interpreted to prevent an arbitrator from awarding a complainant all direct costs and expenses for the completion or repair of the project.~~

~~(s) The award shall become final 30 calendar days from the date the arbitration award is issued. The arbitrator, upon written application of a party to the arbitration, may correct the award upon the following grounds:~~

~~(1) There was an evident miscalculation of figures or an evident mistake in the description of any person, things, or property referred to in the award.~~

~~(2) There is any other clerical error in the award, not affecting the merits of the controversy.~~

~~An application for correction of the award shall be made within 10 calendar days of the date of service of the award by serving a copy of the application on the arbitrator, and all other parties to the arbitration. Any party to the arbitration may make a written objection to the application for correction by serving a copy of the written objection on the arbitrator, the board, and all other parties to the arbitration, within 10 calendar days of the date of service of the application for correction.~~

~~The arbitrator shall either deny the application or correct the award within 30 calendar days of the date of service of the original award by mailing a copy of the denial or correction to all parties to the arbitration. Any appeal from the denial or correction shall be filed with a court of competent jurisdiction and a true copy thereof shall be filed with the arbitrator or~~

1 ~~appointed arbitration association within 30 calendar days after~~
2 ~~the award has become final. The award shall be in writing, and~~
3 ~~shall be signed by the arbitrator or a majority of them. If no~~
4 ~~appeal is filed within the 30-calendar-day period, it shall become~~
5 ~~a final order of the registrar.~~

6 ~~(t) Service of the award by certified mail shall be effective if a~~
7 ~~certified letter containing the award, or a true copy thereof, is~~
8 ~~mailed by the arbitrator or arbitration association to each party or~~
9 ~~to a party's attorney of record at their last known address,~~
10 ~~address of record, or by personally serving any party. Service~~
11 ~~may be proved in the manner authorized in civil actions.~~

12 ~~(u) The board shall pay the expenses of one expert witness~~
13 ~~appointed by the board when the services of an expert witness are~~
14 ~~requested by either party involved in arbitration pursuant to this~~
15 ~~article and the case involves workmanship issues that are~~
16 ~~itemized in the complaint and have not been repaired or replaced.~~
17 ~~Parties who choose to present the findings of another expert~~
18 ~~witness as evidence shall pay for those services. Payment for~~
19 ~~expert witnesses appointed by the board shall be limited to the~~
20 ~~expert witness costs for inspection of the problem at the~~
21 ~~construction site, preparation of the expert witness' report, and~~
22 ~~expert witness fees for appearing or testifying at a hearing. All~~
23 ~~requests for payment to an expert witness shall be submitted on a~~
24 ~~form that has been approved by the registrar. All requests for~~
25 ~~payment to an expert witness shall be reviewed and approved by~~
26 ~~the board prior to payment. The registrar shall advise the parties~~
27 ~~that names of industry experts may be obtained by requesting this~~
28 ~~information from the registrar.~~

29 ~~(v) The arbitrator shall interpret and apply these rules insofar~~
30 ~~as they relate to his or her powers and duties.~~

31 ~~(w) The following shall apply as to court procedure and~~
32 ~~exclusion of liability:~~

33 ~~(1) The board, the appointed arbitration association, or any~~
34 ~~arbitrator in a proceeding under these rules is not a necessary~~
35 ~~party in judicial proceedings relating to the arbitration.~~

36 ~~(2) Parties to these rules shall be deemed to have consented~~
37 ~~that judgment upon the arbitration award may be entered in any~~
38 ~~federal or state court having jurisdiction thereof.~~

~~(3) The board, the appointed arbitration association, or any arbitrator is not liable to any party for any act or omission in connection with any arbitration conducted under these rules.~~

~~SEC. 12.~~

SEC. 11. Section 7110.5 of the Business and Professions Code is amended to read:

7110.5. Upon receipt of a certified copy of the Labor Commissioner's finding of a willful or deliberate violation of the Labor Code by a licensee, pursuant to Section 98.9 of the Labor Code, the registrar shall initiate disciplinary action against the licensee within 30 days of notification.

~~SEC. 13.~~

SEC. 12. Section 7145.5 of the Business and Professions Code is amended to read:

7145.5. (a) The registrar may refuse to issue, reinstate, reactivate, or renew a license or may suspend a license for the failure of a licensee to resolve all outstanding final liabilities, which include taxes, additions to tax, penalties, interest and any fees that may be assessed by the board, the Department of Industrial Relations, the Employment Development Department, or the Franchise Tax Board.

(1) The qualifying person and any other member of the personnel of any license that is subject to suspension under this section shall be automatically prohibited from serving as an officer, director, associate, partner, owner, qualifying individual, or other personnel of record for another license.

(2) The license of any other renewable licensed entity with any of the same personnel of record that have been assessed an outstanding liability covered by this section shall be suspended until the debt has been satisfied, or until those same personnel of record disassociate themselves from the renewable licensed entity.

(b) The refusal to issue a license or the suspension of a license as provided by this section shall be applicable only if the registrar has mailed a notice preliminary to the refusal or suspension which indicates that the license will be refused or suspended by a date certain. This preliminary notice shall be mailed to the licensee at least 60 days before the date certain.

(c) In the case of outstanding final liabilities assessed by the Franchise Tax Board, this section shall be operative within 60

1 days after the Contractor's State Licensing Board has provided
2 the Franchise Tax Board with the information required under
3 Section 30, relating to licensing information which includes the
4 federal employee identification number or social security
5 number.

6 (d) All versions of the application for contractor's licenses
7 shall include, as part of the application, an authorization by the
8 applicant, in the form and manner mutually agreeable to the
9 Franchise Tax Board and the board, for the Franchise Tax Board
10 to disclose the tax information that is required for the registrar to
11 administer this section. The Franchise Tax Board may from time
12 to time audit these authorizations.

13 ~~SEC. 14.~~

14 *SEC. 13.* Section 19830 of the Health and Safety Code is
15 amended to read:

16 19830. Every city or county, whether general law or
17 chartered, which requires the issuance of a permit as a condition
18 precedent to the construction, alteration, improvement,
19 demolition, or repair of any building or structure, shall, in
20 addition to any other requirements, prepare and give notice to the
21 owner of the building or structure whenever an application for a
22 building permit is submitted in the owner's name as builder of
23 the improvements. The notice shall be given by mail; or the
24 notice may be given to the applicant at the time the application
25 for the permit is made, provided that the applicant presents
26 identification sufficient to identify himself or herself as the
27 owner. The notice shall be in substantially the following form:

28
29 "OWNER-BUILDER INFORMATION

30
31 "Dear Property Owner:

32 "An application for a building permit has been submitted in
33 your name listing yourself as the builder of the property
34 improvements specified.

35 "For your protection you should be aware that as
36 'owner-builder' you are the responsible party of record on the
37 permit. Building permits are not required to be signed by
38 property owners unless they are personally performing their own
39 work. If your work is being performed by someone other than

1 yourself, you may protect yourself from possible liability if that
2 person applies for the proper permit in his or her name.

3 “Contractors are required by law to be licensed and bonded by
4 the State of California and to have a business license from the
5 city or county. They are also required by law to put their license
6 number on all permits for which they apply.

7 “If you plan to do your own work, with the exception of
8 various trades that you plan to subcontract, you should be aware
9 of the following information for your benefit and protection:

10 “If you employ or otherwise engage any persons other than
11 your immediate family, and the work (including materials and
12 other costs) is \$500 or more for the entire project, and the
13 persons are not licensed as contractors or subcontractors, then
14 you may be an employer.

15 “If you are an employer, you must register with the state and
16 federal government as an employer and you are subject to several
17 obligations including state and federal income tax withholding,
18 federal social security taxes, workers’ compensation insurance,
19 disability insurance costs, and unemployment compensation
20 contributions.

21 “There may be financial risks for you if you do not carry out
22 these obligations, and these risks are especially serious with
23 respect to workers’ compensation insurance.

24 “For more specific information about your obligations under
25 federal law, contact the Internal Revenue Service (and, if you
26 wish, the U.S. Small Business Administration). For more specific
27 information about your obligations under state law, contact the
28 Department of Benefit Payments and the Division of Industrial
29 Accidents.

30 “If the structure is intended for sale, property owners who are
31 not licensed contractors are allowed to perform their work
32 personally or through their own employees, without a licensed
33 contractor or subcontractor, only under limited conditions.

34 “A frequent practice of unlicensed persons professing to be
35 contractors is to secure an ‘owner-builder’ building permit,
36 erroneously implying that the property owner is providing his or
37 her own labor and material personally. Building permits are not
38 required to be signed by property owners unless they are
39 performing their own work personally.

1 “Information about licensed contractors may be obtained by
2 contacting the Contractors’ State License Board’s automated
3 telephone information system at 1-800-321-CSLB (2752) or by
4 accessing their Web site at www.CSLB.ca.gov.

5 “Please complete and return the enclosed owner-builder
6 verification form so that we can confirm that you are aware of
7 these matters. The building permit will not be issued until the
8 verification is returned.

9 Very truly yours,

10 “(Name of permitting agency)”.

O